

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

DONNA LANZA-NEVERS,)
)
Plaintiff,)
) No. 1:04-CV-348
v.)
) Magistrate Judge Susan K. Lee
AUBREY MULLERWORTH d/b/a)
OCOEE CHEVRON AND COUNTRY INN,)
)
Defendant.)

M E M O R A N D U M

Before the Court are the following motions and a proposed agreed order filed by Plaintiff Donna Lanza-Nevers (“Plaintiff”) and Defendant Aubrey Mullerworth d/b/a Ocoee Chevron and Country Inn (“Defendant”) regarding the voluntary dismissal of this action pursuant to Fed. R. Civ. P. 41(a)(2):

- (1) Plaintiff’s motion for voluntary dismissal (Court File No. 21);
- (2) Defendant’s motion for discretionary costs and attorneys’ fees (Court File No. 22);
- (3) Defendant’s motion to set terms and conditions of dismissal (Court File No. 25); and
- (4) the parties’ proposed agreed order of dismissal with prejudice (Court File No. 33).

On May 27, 2005, the Court held a hearing on the three motions, and the parties were each represented by counsel. Defendant objected to a voluntary dismissal of the action without prejudice to its being refiled in the future. Plaintiff stated she no longer wished to pursue the action, that she was aware of the consequences of dismissing her action, and that she would agree to a dismissal with prejudice. Accordingly, the parties submitted an agreed proposed order of dismissal with prejudice on May 31, 2005, noting that the parties stipulate that the action be dismissed with

prejudice (Court File No. 33). In light of the parties' agreement, the Court **WILL ORDER** this action **DISMISSED WITH PREJUDICE**. To the extent Plaintiff's motion (Court File No. 21) sought a dismissal without prejudice, the Court **WILL DENY** that motion as **MOOT**. Because the parties agreed on the terms of the dismissal with prejudice, the Court **WILL DENY AS MOOT** Defendant's motion to set terms and conditions of dismissal (Court File No. 25).

Regarding Defendant's motion for discretionary costs and attorneys' fees (Court File No. 22), the Court **WILL DENY** this motion because Defendant has set forth no basis for an award of attorneys' fees and has not demonstrated that an allowance of costs from the previous civil action raising Plaintiff's claims, which was voluntarily dismissed (*See* E.D.TN. Case No. 1:02-CV-96), would be appropriate in this case at this time. To the extent Defendant seeks an allowance of appropriate costs, she may seek costs through the Clerk's office pursuant to applicable rules of civil procedure.

An Order shall enter:

s/Susan K. Lee
SUSAN K. LEE
UNITED STATES MAGISTRATE JUDGE